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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3284

[Docket No. FR-5721-F-02]
RIN 2502-AJ19

Manufactured Housing Program Fee: Final Fee Increase

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's Manufactured Housing Program Fee regulations to raise the fee for each transportable section of a manufactured home that the manufacturer produces in accordance with HUD's Manufactured Home Construction and Safety Standards. This fee is referred to as a label fee. After considering public comments on HUD's May 2, 2014, proposed rule, this final rule raises the label fee to \$100.

DATES: *Effective Date:* **[Insert date that is 30 days after date of publication in the Federal Register].**

FOR FURTHER INFORMATION CONTACT: Pamela B. Danner, Administrator, Office of Manufactured Housing Programs, Room 9168, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone number 202-708-6423 (this is not a toll free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll free Federal Relay Service at 1-800-877-8389.

SUPPLEMENTARY INFORMATION:

I. Background

HUD initiated this rulemaking to amend the amount of the fee collected from manufactured home manufacturers in accordance with section 620 (42 U.S.C. 5419) of the

National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000 (42 U.S.C. 5401 et seq.) (the Act). Under this authority, HUD collects these fees through the sale of labels which the manufactured home manufacturer must apply to each transportable section of a manufactured housing unit that it produces as evidence that the unit(s) conform to HUD's Manufactured Home Construction and Safety Standards regulations, codified at 24 CFR part 3280. HUD establishes and collects these fees to offset its expenses for carrying out its responsibilities under the Act, including carrying out inspections, developing manufactured home construction and safety standards under 42 U.S.C. 5403, and making payments to states as required by statute and HUD's regulations (see § 3284.10).

On May 2, 2014, at 79 FR 25035, HUD published a proposed rule for public comment proposing to increase the fee to an amount between \$95 and \$105 per transportable section of manufactured housing unit produced. In proposing this increase, HUD stated that while it has had authority to modify the fee in order to collect the overall amount of the fee established by HUD's appropriation for the applicable fiscal year, HUD has not exercised this authority since 2002. Given the increased costs related to overseeing the quality, safety, and durability of manufactured housing, the substantial reduction in fee collections since 2002 and, based on HUD's projected production levels of between 95,000 and 105,000 sections, HUD proposed raising the fee to an amount between \$95 and \$105 per transportable unit.

II. The Commenters

The public comment period for the May 2, 2014 (79 FR 25035), proposed rule closed June 2, 2014. HUD received two public comments in response to this proposed rule. The comments were submitted by national trade associations representing the manufactured housing

industry. One commenter questioned the magnitude of the increase of the proposed fee but stated that it did not oppose the proposed fee modification, provided that additional revenues derived from the change were utilized to fund legitimate program functions in a manner proportionate to current and projected production levels, and are targeted and utilized to provide enhanced funding for State Administrative Agencies (SAAs). The second commenter also expressed concern regarding the magnitude of the increase of the proposed fee and stated that the proposed fee is not reflective of current production levels. The commenter also recommended that HUD withdraw the proposed rule and develop a formula for establishing a fee based on production. The following section of this preamble summarizes the significant issues raised by the commenters on the May 2, 2014, proposed rule and HUD's responses to these comments.

Comment: A commenter stated that HUD's proposed fee was an 143 to 169 percent increase over the current fee and, according to HUD, based on increased program expenses over the last 12 years. The commenter questioned, however, how program expenses could require such a significant increase in the fee when industry production over the same period decreased by 64 percent.

Response: Program operating expenses do not have a direct correlation to production levels since monitoring is an ongoing expense. Nevertheless, HUD recognizes the magnitude of the increase. As discussed in the preamble to this rule, however, HUD has not increased the label fee since 2002. Moreover, beginning in fiscal year (FY) 2014 and continuing through FY 2015, HUD plans to improve implementation of two key requirements of the Act. First, HUD plans to obtain contractual support to assist in the administration of the installation standards program in states that have not established approved programs and to assist in administering the dispute resolution program in states that have not established approved dispute resolution

programs. HUD through its monitoring contractor also requires services to perform the design monitoring reviews of third party agencies as required by § 3282.452(e). Second, HUD is responsible for updating the construction and safety standards on a 2-year cycle, but has not been able to schedule a meeting of the Manufactured Housing Consensus Committee (MHCC) since October, 2012. To address this, HUD recently awarded a contract to an Administering Organization as required by the Act and will begin holding regular meetings of the MHCC. Finally, beginning in FY 15, HUD plans to structure the Manufactured Housing Program to be self-supporting. This means that unlike most prior years, HUD will not receive a direct appropriation of funds from Congress but will be dependent on label fees for administering the program. As a result, HUD has and will continue to incur increased costs to administer the program and must establish a label at a level that will allow it to administer the program operations while relying less on additional appropriations from Congress.

Comment: The second commenter stated that HUD's proposed label fee represents an increase of between 243 and 269 percent over the current fee and fails to consider the overall cost of regulation under the Manufactured Housing program. According to the commenter, the industry pays approximately \$6.4 million per year in fees to Production Inspection Primary Inspection Agencies (IPIAs) and Design Approval Primary Inspection Agencies (DAPIAs) in order to comply with the Manufactured Housing Construction and Safety Standards and Regulations. This is in addition to \$10 million HUD estimates would be collected in label fees if the fee is increased to \$100 per label. While the label fee is an important component of the HUD program, the commenter stated that HUD should consider the overall cost of regulation that is passed to the consumer and the impact on the affordability of manufactured housing prior to establishing a new label fee.

Response: HUD is cognizant of the fees paid to IPIAs and DAPIAs by manufactured housing manufacturers for design reviews and inspections. However, these fees are a cost of doing business, established by contract or other agreement as agreed upon between the manufacturer and the primary inspection agency or, in the case of a state acting as an exclusive IPIA, by the state. The manufactured housing program fee, on the other hand, represents the fee necessary to offset HUD's expenses in connection with carrying out its responsibilities under the Act.

Comment: One commenter recommended, given the magnitude of the increase of the proposed fee, that it be phased in over several years.

Response: Phasing in the increase over several years is not contemplated by the Act which provides that the amount of the fee may only be modified "as specifically authorized in advance of *an annual* appropriation." (Emphasis added). In addition, phasing in the increase would be difficult to administer and, more importantly, would not provide the funding required by HUD to meet the program's operating expenses for the balance of FY 2014 and FY 2015.

Comment: A commenter stated that manufacture home production has been slowly increasing from 50,000 homes in 2010 to just over 60,000 in 2013, and that the proposed label fee increase does not consider likely production increases. According to the commenter, while HUD supervision goes up as production rises, the relationship is not linear and that if the fee becomes fixed at \$95 to \$105, a strong recovery by the industry could result in a windfall for HUD that has not been justified in the proposal.

Response: In estimating the amount of the fee, HUD included a 5 percent per year production increase based on historic data. However, if there is an unpredicted increase in production, HUD would consider reducing the label fee.

Comment: A commenter stated that HUD reported in its FY 2012 Congressional Budget Justifications that the responsibilities of its manufactured housing program have remained unchanged. The commenter questioned why the decline in industry production has not resulted in reduced program responsibilities and lower program expenses. The commenter questioned whether the increase in program expenditures might result from factors other than those which justify an increased label fee and must be addressed and corrected by the program going forward.

Response: As discussed in response to a previous comment, program operating expenses do not have a direct correlation to production levels since monitoring is an ongoing expense. Moreover, the Manufactured Housing Improvement Act of 2000 increased HUD's responsibilities to carry out the requirements of the Act. For example, it established the MHCC and requires that HUD contract with an Administering Organization, hold regular MHCC and subcommittee meetings, and update the standards on a 2-year cycle. In addition, the Manufactured Housing Improvement Act of 2000 requires that HUD establish and revise model installation standards, implement an installation program in states without this program; and approve installation programs in the states that adopted installation standards based on the federal model installation standards and HUD's requirements for an approved installation program. HUD's responsibilities will be increasing as implementation of an installation program in the states without this program will be completed in FY 2015. Finally, HUD was required to establish a model dispute resolution program, administer the program in states that have not adopted such a program, and approve state dispute resolution programs based on the requirements established by HUD for such programs. HUD is also planning to obtain a contractor to fully implement a dispute resolution program in states that did not adopt such a program in FY 2015.

Comment: A commenter stated, based on its review, that HUD's payments to the program's monitoring contractor have remained constant or increased even as production levels have decreased. According to the commenter, these sustained and increased contractor funding levels, during a period of decline in industry production and a falling number of consumer complaints and referrals to the federal dispute resolution system, is attributable to a major expansion of in-plant regulation with significant "make-work" activities for the program contractor and should be eliminated. According to the commenter, eliminating these unnecessary functions would realize significant cost savings that could be used to fund the functions and operations of the SAAs and properly fund the responsibilities of the Secretary.

Response: HUD's overall monitoring costs have remained constant or gradually increased over the last few years due to inflation and efforts to enhance quality and reduce non-conformances and the number of consumer complaints. The improvements in overall home quality and reduced levels of consumer complaints are not "make-work" activities as suggested by the commenter. Rather, they are the direct result of the focus of HUD's cooperative monitoring activities and training over the past four years with manufacturers and their inspection agencies to improve overall construction quality. The goals of such monitoring are to reduce the number of consumer complaints and service calls for manufacturers, and enhance the manufacturer's quality assurance programs. While HUD believes that such goals are being achieved, without a similar level of monitoring, these improvements may not be sustained. For these reasons, HUD will be conducting oversight and evaluation of its inspection agencies performance to determine if the improvements put in place over the past four years are being sustained. HUD will consider future reductions in its in-plant monitoring if the results warrant

changes in the level of current monitoring activities and may use the savings to fund SAA operations as discussed elsewhere in HUD's responses to the comments.

Comment: The second commenter echoed these concerns stating that the amount paid to the monitoring contractor has increased to \$5 million in 2013 from \$3.2 million in 2011. According to the commenter, the costs for the monitoring contractor should be going down, not up. The commenter stated that while ensuring quality assurance in plants has been generally successful, it has also resulted in reduced service calls, fewer consumer complaints, and higher quality homes. According to the commenter, it is logical to conclude that the need for time consuming and costly audits should be reduced.

Response: HUD agrees with the commenter that quality assurance monitoring has generally been successful. However, this shift in monitoring has been instituted using a training approach at manufacturer facilities over a period of 4 years. While the process appears successful in reducing the number of consumer complaints, the process is more time consuming for auditors and therefore, more expensive. As stated in a prior response, HUD believes that without continuing this level of monitoring, these improvements may not be sustained.

Comment: A commenter stated that last year annual audits in each plant lasted 3 days. According to the commenter, audits could be shortened by at least one day, saving substantial sums. The commenter also stated cost savings could be realized if audits were conducted with regional planning in mind, so that auditors could visit plants within the same region and save money on air fare. The commenter also stated that the same logic holds for HUD's oversight of the Primary Inspection Agencies and that over time, monitoring and review of the activities of DAPIAs and IPIAs should improve performance and reduce the need for monitoring.

Response: HUD's current 3-day audit approach is required to conduct an overall and thorough evaluation and quality audit of each inspection agency's performance in each factory. In scheduling audits, HUD travel costs and locations are considered as factors in current contract administration. As previously indicated, HUD agrees that over time, its current monitoring activities could be reduced if supported by inspection agency performance in sustaining improvements in their oversight of manufacturers and their quality assurance programs and reductions in non-conformances and by declines in the levels of consumer complaints.

Comment: A commenter stated that HUD could reduce its cost estimates for regulation and enforcement of installation programs in each of the 15 states that do not have their own approved program by partnering with the industry. Specifically, the commenter recommended that HUD partner with the Manufactured Housing Educational Institute which has an effective training program that has been used since 2006 in over 15 states for installers. The commenter also recommended that HUD consider collecting license and inspection fees from installers as an alternative to label fees for activities related to administering installation programs in the 15 default states.

Response: HUD is currently planning to contract with qualified entities to perform this function and will be looking to use resources currently in place. HUD will also examine the viability of collecting license and inspection fees from installers in the future.

Comment: A commenter stated that HUD's expansion of in-plant monitoring from contractor scrutiny of the home to assess the IPIA to contractor inspections and analyses of the manufacturer's quality assurance systems should have been first considered by the MHCC for prior review and comment and should be eliminated.

Response: HUD's emphasis over the past years on examining the quality assurance programs of the manufacturers and the third party agencies inspection of these programs is consistent with the Program's overall monitoring policies and the Program's regulations. The purpose of this education and monitoring approach has been to assure compliance with the Federal standards and to reduce consumer complaints. HUD does not believe that it requires prior review by the MHCC to implement current modified monitoring procedures which are part of HUD's responsibilities under the Act.

Comment: The commenter, citing data from HUD's Congressional Budget Justifications since 2005, stated that payments to SAAs have decreased. According to the commenter, with a substantial number of states facing critical difficulties providing funding for SAA operations, it is essential that additional HUD funding of SAAs be provided. The commenter recommended that any additional program revenues resulting from HUD's proposed fee increase be utilized to increase payments to the SAAs, and thereby preserve the federal-state partnership that is the bedrock of the manufactured housing program.

Response: SAA funding has not decreased. In fact, SAAs that were fully approved as of December 27, 2000, receive funding at the same production levels and siting as in 2000. HUD will consider future modifications to the current fee distribution formula to ensure states are provided with adequate funding to perform the required SAA functions.

Comment: The second commenter also stated that it has serious concerns that the fees paid to SAAs are not reflective of current production and shipment levels and that HUD should adjust its budget and consider a fee increase based on more realistic payments to SAAs. The commenter also stated that a flaw in the federal law mandates that fees be based on shipment and production levels in effect in the year 2000 but that production and shipments levels have

declined significantly during the last 14 years. Some states have increased production and shipments since 2000 yet they continue to receive payments based on lower production levels in 2000. Most states, however, have shipments and production levels substantially lower than they were in 2000, yet these states continue to receive payments at the higher rate calculated according to production and shipments in 2000.

Response: HUD will review the basis supporting the amount of fees paid to SAAs and the adequacy of funding to the approved SAAs.

Comment: One commenter recommended that HUD consider withdrawing the proposed rule and develop a formula for establishing fees based on production. According to the commenter, the fee could be raised or lowered depending on the annual number of homes produced, perhaps over a two year cycle.

Response: HUD does not have the legal authority to develop a formula to establish fees based on production. As already noted, the Act provides that the amount of the fee may only be modified “as specifically authorized in advance of an annual appropriation” and is tied, therefore to annual appropriations. As also discussed, the establishment of an appropriate fee also needs to take into consideration several factors, including but not limited to production levels, such as ongoing program operating expenses. HUD is moving forward with this rule since the fee increase is required for HUD to carry out the Program’s basic responsibilities under the Act.

Comment: Both commenters objected to a comment made in HUD’s FY 2015 Congressional Justification that it is seeking authority to allow future fee modification to be implemented via notice, rather than rulemaking. One commenter stated that such authority would further erode the goal of the Manufactured Housing Improvement Act of 2000 to ensure accountability and transparency in the fee adjustment process, including a full opportunity for all

stakeholders to participate in that process through the informal rulemaking requirements of the Administrative Procedure Act. The commenter also stated that the history of HUD's modifications to the program fee, and specifically the fact that HUD has not changed the fee since 2002, does not support the basis HUD identifies for such a provision; specifically, the need for HUD to make timely adjustments to the fee. The second commenter stated it is essential for the MHCC to review and comment on future fee increases and that it believes that HUD has the ability to expedite rulemaking if needed. Both commenters recommended that HUD discontinue efforts to seek this authority.

Response: HUD appreciates the opportunity to clarify its position regarding seeking authority to modify the fee by notice. Based on the comments received, HUD has not decided whether to pursue efforts to seek the legal authority to modify the manufactured housing program fee by notice. Nevertheless, should HUD pursue such authority it has been and continues to be HUD's position that modifying the fee would require publishing a notice in the Federal Register announcing the proposed fee and providing a 30-day public comment period for the purpose of inviting comment. After consideration of the public comments received on the proposal, HUD would publish a final notice in the Federal Register announcing the modified fee, any other necessary information regarding payment of the fee, and provide at least a 30-day delayed effective date. In addition, prior to implementing this change, HUD would be required to publish a final rule revising § 3284.5 to accommodate the authority to revise the fee by notice. HUD notes that such a procedure could be used to both increase and decrease the fee. Nevertheless, HUD believes that such a procedure is consistent with section 620 of the Act and, notwithstanding the description in HUD's Congressional Justification, is rulemaking under

section 553 of the Administrative Procedure Act (5 U.S.C. 553). As stated, however, HUD has not decided whether to pursue this authority.

III. This Final Rule

This final rule raises the amount of the fee to \$100 per transportable unit. When HUD last modified the amount of the fee per transportable section in 2002 (67 FR 52832, August 13, 2002), HUD divided the annual projected number of manufactured housing transportable units (350,000) into the amount appropriated by Congress for the manufactured housing program for the fiscal year. (See 67 FR at 52832.) As described in the May 2, 2014, proposed rule, HUD believes that a similar formula should form the basis of this revised fee. This approach is also consistent with the method and formula used to determine the monitoring inspection fee in § 3282.307(e). In this regard, HUD has determined, based on the current projected production levels, that the number of manufactured housing transportable units will be approximately 100,000 sections. This is the average of the range of production levels discussed in the proposed rule. Additionally, as stated in HUD's 2015 budget justification, HUD has estimated that, at current production levels, approximately \$10 million annually is required to administer the Manufactured Housing Program in a manner that fulfills HUD's statutory oversight responsibilities. This is consistent with HUD's budget requests for FY 2015 which stated that HUD would through rulemaking increase the fee to an amount of up to \$100 per label.

HUD recognizes that the Federal government is nearly through FY 2014, and that application of a new fee may only apply to a limited portion of FY 2014, or may not be feasible until FY 2015. Nevertheless, the fee is important to sustain the program. The increase in fee implemented in this rule is one that HUD believes is appropriate for succeeding fiscal years barring subsequent appropriations that require further changes.

IV. Findings and Certifications.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As discussed in the May 2, 2014, proposed rule, this final rule would not have a total economic impact of more than \$6.1 million, which the maximum additional amount of fees that HUD has determined would be collected if the fee is raised to \$100 per label.

By annual appropriations acts, Congress requires HUD to collect fees from manufacturers of manufactured housing to ensure the annual appropriation that HUD provides in a given fiscal year. In addition to the authority to set label fees, the reports accompanying HUD's recent annual appropriations acts reflect strong Congressional encouragement for HUD to respond to the annual appropriations act authority to modify the label fees to obtain additional funding to support the manufactured housing program. The per-unit fee would remain as has always been the case to be proportional in its impact, with greater collections from larger manufacturers and less collections from smaller manufacturers.

HUD has concluded, generally, that, as is often the case with increased fees placed on manufacturers of products used by consumers, the fee increase will be passed through to consumers, thereby minimizing the impact on manufacturers large and small. If the cost of the fee is passed on to the consumer, the purchase price of a manufactured home would increase, and placements of new manufactured homes would decrease slightly below currently forecasted levels. If manufacturers absorb the cost, however, the effect of the increase would result in

lower profits for the manufacturers and sales would remain unchanged. In either scenario, this change in fee collections would represent a transfer to tax payers from manufacturers of manufactured housing or consumers purchasing new manufactured housing, since the increased fee collections will replace funds collected through federal tax collections.

For these reasons, HUD submits that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

This final rule involves a rate or cost determination and a related fiscal requirement that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the

Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 3284

Consumer protection, Manufactured homes.

Accordingly, for the reasons discussed in this preamble, HUD amends 24 CFR part 3284 as follows:

PART 3284—MANUFACTURED HOUSING PROGRAM FEE

1. The authority citation for 24 CFR part 3284 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5419, and 5424.

2. Revise § 3284.5 to read as follows:

§ 3284.5 Amount of fee.

Each manufacturer, as defined in § 3282.7 of this chapter, must pay a fee of \$100 per transportable section of each manufactured housing unit that it manufactures under the requirements of part 3280 of this chapter.

Date: August 8, 2014

Carol J. Galante
Assistant Secretary for Housing-
Federal Housing Commissioner

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